National Duct Corporation *and* Sheet Metal Workers' International Association, Local Union No. 102, Petitioner. Case 5-RC-11468

November 17, 1982

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election[1] held on April 30, 1981, and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief,[2] and hereby adopts the Acting Regional Director's findings and recommendations.

We agree, for the reasons stated by the Acting Regional Director in his report, that the Employer's Objections 1 and 3 lack merit. Further, we agree with the Acting Regional Director that the Employer's Objections 2 and 4 also lack merit. However, we disagree with the rationale set forth by the Acting Regional Director in recommending that Objections 2 and 4 be overruled; rather, we set forth our rationale below.

In Objection 2, the Employer alleged that the Petitioner threatened employees with bodily harm to coerce them to vote for the Petitioner. In support of this objection, the Employer presented affidavits from employees Fred Perkins and Richard Wingate. According to Perkins, he, along with five or six other employees, attended a union meeting about 3 weeks before the election. Union Representative Charlie Peters conducted the meeting, and when Perkins asked a lot of questions about the Petitioner's area contract, Peters "got angry" and "insulted [Perkins] personally for taking a stand against the Union." Further, Perkins states, "I found out after the meeting from other employees that George Quist [one of the co-chairmen of the employee organizing committee] had threatened to break both my hands, but would 'spare me' if I voted yes. I was told he said this in front of Peters and two other employees."

Wingate, who also was at this meeting, stated in his affidavit that after Perkins asked a lot of questions, Peters "got upset" and said, "If you don't play the game my way, you don't play at all." According to Wingate, Peters then told Perkins "to go ahead and vote no because they didn't need him."

The only other evidence presented by the Employer in support of this objection was a letter from Peters to the Employer informing it that Larue Webster and George C. Quist were co-chairmen of the organizing committee. Having considered the above evidence, and accepting as true the facts most favorable to the Employer, we find that the Employer has not presented sufficient evidence to establish a *prima facie* case of objectionable election interference. The only direct evidence presented by the Employer of alleged threats by the Petitioner was Wingate's statement in his affidavit that Peters told Perkins that if he did not "play the game" Peters' way, he would not "play at all," followed by a statement that Perkins should go ahead and vote "no" because his vote was not needed. We find nothing threatening or coercive in these remarks; rather, Peters' remarks seem to indicate merely an unwillingness to accede to Perkins' ideas or criticisms or to continue listening to them. Peters in no way threatened Perkins with bodily harm or in any way suggested that Perkins' employment would be adversely affected if the Petitioner became the employees' bargaining representative. Under these cirmcumstances, we find nothing objectionable in Peters' remarks to Perkins.

We further find that the alleged threat by Quist related in Perkins' affidavit is insufficient to establish a *prima facie* case of objectionable conduct. Perkins did not hear Quist's remarks, nor did Perkins specify the individual who related to him what Quist allegedly said about Perkins. Moreover, it appears that the Employer made no attempt to ascertain the identity of the individual who talked to Perkins or of any individual who actually heard Quist's remarks or to present affidavits from any of these individuals to the Acting Regional Director.

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 7 for, and 3 against, the Petitioner; there were 2 challenged ballots, an insufficient number to affect the outcome of the election.

[2] The Employer has moved that the Board compel the Acting Regional Director to transmit to the Board the entire file, including affidavits and investigatory notes in this case. For the reasons stated in our recent decision in *Summa Corporation d/b/a Frontier Hotel*, 265 NLRB No. 46 (1982), we deny this motion. Moreover, the issue of the duty of Acting Regional Director to transmit evidence to the Board need not be addressed in this case. Although statements of witnesses are expressly excluded from the record as defined in Sec. 102.69(g)(1)(ii) of the Board's Rules and Regulations, as revised September 14, 1981, here the witness statements submitted to the Acting Regional Director by the Employer, and which constitute all of the Employer's evidence in support of its objections, were appended to the Employer's exceptions; once appended, they become part of the record as defined in Sec. 102.69(g) and have been fully considered by us. Thus, we have reviewed all of the Employer's evidence, and, having accepted as true the facts most favorable to the Employer, we have concluded, as set forth below, that the Employer has failed to meet its burden of presenting a *prima facie* case of objectionable election interference. Since none of the Employer's objections raises substantial or material factual issues, no evidentiary hearing is warranted. See Sec. 102.69(d); *Reichart Furniture Company* v. *N.L.R.B.*, 649 F.2d 397 (6th Cir. 1981); *Revco D.S., Inc.* v. *N.L.R.B.*, 653 F.2d 264 (6th Cir. 1981).

Nor did the Employer present any justification to the Acting Regional Director or to us of why such evidence could not be reasonably obtained by it. Under these circumstances, we find that the Employer did not meet its burden of demonstrating by specific evidence that objectionable conduct occurred, and accordingly, on the basis of such unsubstantiated hearsay, we find an evidentiary hearing unwarranted. Accordingly, we hereby overrule Objection 2.

In Objection 4, the Employer alleges that the Petitioner granted work permits to employees who supported the Petitioner and refused to grant such permits to employees who opposed the Petitioner. In support of this objection, the Employer presented affidavits from employees Fred Perkins and Richard Wingate. Perkins stated in his affidavit that about a month before the election he asked George Quist and Larry Webster, co-chairmen of the organizing committee, if they had received or been promised "A cards," which are journeymen work permits. Webster said they had received them, but Quist stated that they had not received them. Two weeks later, according to Perkins, he received a telephone call from "someone who said he was the President of Local 102 of the Sheetmetal Workers Union." That person mentioned "A cards" and promised Perkins he would get one if he voted "Yes" in the election.

According to Wingate's affidavit, Peters told Wingate at a union meeting that he had to go to school if he wanted to be in the Union. However, Wingate states that he knew that Peters had promised five employees "A cards," including George Quist who had not been to school.

We find the above evidence insufficient to establish a *prima facie* case of objectionable conduct. Even assuming that the Petitioner promised employees "A cards" if they supported the Petitioner, such conduct is not sufficient to set aside the election. "A cards" are part of a system which would only operate if the Petitioner became the bargaining representative; thus, the Petitioner did not engage in objectionable conduct by telling employees that such a system will be instituted if they support the Petitioner. Indeed, without their support, the Petitioner would not become the employees' bargaining representative, and the system, therefore, could not be put into effect. Moreover, contrary to the Employer's assertion, there was no evidence presented that the Petitioner told employees that they would not receive "A cards" if they did not support the Petitioner. Accordingly, we find nothing objectionable in the Petitioner's promise of "A cards" to employees. Similarly, Wingate's statement that Peters told him he would have to go to school before obtaining an "A card," whereas one of the employee organizers was promised an "A card" without having to go to school, does not demonstrate objectionable misconduct. The Employer presented no evidence that Wingate was opposed to the Petitioner, that he was in fact qualified to receive a journeymen work permit without attending school, or that Quist was not qualified to receive a journeyman work permit without attending school. Under these circumstances, we find insufficient evidence of objectionable election interference and that an evidentiary hearing is unwarranted. Accordingly, we hereby overrule Objection 4.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Sheet Metal Workers' International Association, Local Union No. 102, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all of the employees in the following appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All full-time and regular part-time foremen, leadmen, mechanics, apprentices, and helpers employed by the Employer in the field and in the shop, located at 4809 Lydell Road, Hyattsville, Maryland, but excluding all other employees, guards, and supervisors as defined in the Act.